BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A REVISED SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY THE CITY OF BREMERTON TO DOUGLAS E. WEEKS,	
CITIZENS FOR SENSIBLE RESIDENTIAL ZONING, INC., Appellants,	SHB No. 79-35
v.	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CITY OF BREMERTON and DOUGLAS E. WEEKS, Respondents.	

This matter, the request for review of a revision to a substantial development permit, came before the Shorelines Hearings Board, Nat Washington, Chairman, Chris Smith, James S. Williams, Robert S. Derrick, David W. Jamison, and David Akana (presiding), at a hearing in Tacoma, Washington, on October 8, 1979.

Appellant was represented by its attorney, Alan Corner; respondent permittee was represented by his attorney, Craig R. Dodel; respondent

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city was represented by its attorney, Karen Conoley.

Having heard the testimony, having examined the exhibits, having considered the contentions of the parties, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter concerns a revision to a substantial development permit issued in August of 1976 to Richard Person for the construction of a 20 unit condominium complex on the Port Washington Narrows. The permit was appealed to this Board, from which came a final decision entered in April of 1977 remanding the matter to the City of Bremerton for the addition and revision of conditions. The proposed development and the site are described in Manette Peninsula Neighborhood Association v. City of Bremerton and Richard W. Person, SHB No. 237.

Sometime after the Board's decision, the site in question was sold to Donald Ostrom, who caused to be prepared certain architectural drawings for the proposed condominiums. The upland portion of the site was smaller in size than originally believed, and Ostrom sought and received a revision to the permit which relocated one of the three buildings in the complex farther back from the water because a portion of it would otherwise have had to be constructed over the bulkhead where a dilapidated two-story home was formerly located. The number of parking spaces was also reduced from 35 to 23 in this revision. Appellant appealed the revision to this Board, and its appeal was dismissed for

lack of certification. Citizens for Sensible Residential Zoning, Inc. v. City of Bremerton and Donald L. Ostrom, SHB No. 79-8, appeal docketed, No. 79-2-00380-5, Thurston County Superior Court, April 4, 1979. Subsequently, the site was purchased by respondent Douglas Weeks.

A second revision to the permit (see exhibit A-3) was sought by Weeks, which involved deletion of two of the 20 condominium units and the relocation of one of the three buildings (B), that which was closest to the former location of the two-story home, to adjoin the southernmost building (C). The number of parking spaces was set at 29. There are no new structures which are not shown on the original site plan. Detailed plans and text were received by the City, which described the proposed changes to the permit. The proposed revision was approved by the City, using as a basis for comparison the first revised permit rather than the original permit. Appellant sought review of this revision, which was certified.

II

The height of the buildings on the complex was and is limited to a maximum of 30 feet above the existing grade by the permit. (The buildings were earlier intended to be no higher than 29 feet, although permission was granted for 30 feet.) Appellant contends, but did not prove that "Building A", or the northernmost building, would exceed 30 feet height above the existing grade as a result of the permit revision. In fact, Building A is reduced two units in size as a result of the permit revision.

III

The site was cleared and excavated about one year ago. The ground closest to appellant's property and where Building A is to be located has been graded but not filled.

IV

Appellant contends that the proposed revision reduces the building setback from 15 feet to 3 feet, and in some locations, more except for emergency passage. The original permit drawing shows all structures set 15 feet minimum landward of the bulkhead except for a portion of Building D, which is located between 7 feet and 8 feet from the proposed sundeck, which was to be constructed over the water at the location of the two-story house. (See Exhibit A-2.) The second revised permit, which locates the proposed development upon a more accurate site map, actually reduces building lot coverage over what was originally allowed in terms of building construction because of the deletion of two units from the project. Because of the smaller lot size, a corner of Building A appears by measurement to be located about 13 feet from the bulkhead; the corner of Building B appears to be located about 7 feet to 8 feet from the position of the former house; and Building C is attached to a side of Building B.[1]

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1. We note that a 15 foot minimum setback for front and rear yards appears to be required under the City's zoning code. (See Exhibit A-3.)

At the time of original permit issuance in 1975, there was no shoreline setback provision in effect pursuant to an approved or adopted master program. At the time of the instant permit revision, the City's adopted and approved master program provided for a 25 foot setback from the ordinary high water line.

V

Appellant contends, but did not prove, that the proposed revision will cause additional significant adverse environmental impact due to the loss of certain existing plants and trees along the waterfront and in the center of the complex. The original and revised permits require that "major vegetation" shall be retained where feasible; if removed, landscaping must be replaced. Additionally, appellant contends that a reduction in the number of parking spaces causes an adverse effect to sidestreet parking. While the reduction in number of parking spaces may cause an effect on sidestreet parking, we are not persuaded that the instant revision will render the effect both adverse and significant.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Revisions to shoreline permits are provided for in WAC 173-14-064. After receiving detailed plans and text describing the proposed changes,

local government may approve the revision if it determines that the proposed changes are "within the scope and intent of the original permit." WAC 173-14-064(1). Although the City did not test the second permit revision against the original permit, but used instead the first revision as the basis for comparison, our review is based upon the original permit document.

Scope and intent is defined in WAC 173-14-064(2):

> "Within the scope and intent of the original permit" shall mean the following:
>
> (a) No additional over water construction will be involved;
>
> (b) Lot coverage and height may be increased a maximum of ten percent from the provisions of the original permit: Provided, That revisions involving new structures not shown on the original site plan shall require a new permit, and: Provided further, That any revisions authorized under this subsection shall not exceed height, lot coverage, set-back or any other requirements of the master program for the area in which the project is located.
>
> (c) Landscaping may be added to a project without necessitating an application for a new permit: Provided, That the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the master program for the area in which the project is located;
>
> (d) The use authorized pursuant to the original permit is not changed;
>
> (e) No additional significant adverse environmental impact will be caused by the project revision.

At issue in the instant matter are subsections (b) and (e) of the above-quoted section. Subsection (b) allows a maximum increase of ten percent to lot coverage and height from the provisions of the original permit. The instant revision does not increase the height limits from the terms of the original permit. With respect to lot coverage, the only definite figure known is that the instant revision removes 1250 square feet of building from the site; the site has not been shown to be of such area that there would be a resultant increase of lot coverage over the provision of the original permit. Thus we cannot conclude that lot coverage has increased over that which was earlier allowed. Because there is no increase in lot coverage or height, the second proviso of subsection (b) is not applicable.

Subsection (e) provides that no additional significant adverse environmental impact will be caused by the project revision. We conclude that the instant revision has not been shown to cause such additional impacts.

II

The instant revision by Weeks has not been shown to be outside of the provisions of WAC 173-14-064(2). Accordingly, the action of the City approving the revision should be affirmed. WAC 173-14-064(5).

III

We have considered appellant's remaining contentions and find them without merit.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The action of the City of Bremerton approving the shoreline substantial development permit revision to Douglas E. Weeks is affirmed.

DATED this 30th day of October, 1979.

SHORELINES HEARINGS BOARD

NAT W. WASHINGTON, Chairman

CHRIS SMITH, Member

JAMES S. WILLIAMS, Member

ROBERT S. DERRICK, Member

DAVID W. JAMISON, Member

DAVID AKANA, Member